

1984 S.C. Op. Atty. Gen. 240 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-102, 1984 WL 159909

Office of the Attorney General

State of South Carolina

Opinion No. 84-102

August 23, 1984

**\*1 RE: Judge Edward C. Dennis, Jr.**

Purvis W. Collins

Director

South Carolina Retirement System

Sol Blatt Building, Second Floor

Columbia, South Carolina 29201

Dear Mr. Collins:

You have requested advice as to whether a municipal judge is exempt from the mandatory retirement provisions of § 9–1–1530 because of the language of the last proviso of that section, which provides as follows:

Provided, however, that excepting constitutional offices, this section shall not apply to appointive offices receiving per diem or travel allowances as total compensation or to employees of the State Court System when such court employees are employed on a part-time basis.

While municipal courts are considered part of the State Court System, the above-quoted provision exempts only ‘employees.’ I enclose a copy of an opinion of this office dated November 5, 1975, which concludes that part-time municipal judges are ‘officers,’ as opposed to ‘employees.’ While that opinion was rendered in a different context, the policy of § 9–1–1530 is obviously to require mandatory retirement in nearly every situation, and the few exceptions to it should be narrowly read to effectuate that broad policy. Additionally, it appears that in § 9–1–1530 the term ‘employee’ was specifically used in contrast to ‘officer,’ a term which appears earlier in the same section.

Such being the case, it appears that the General Assembly did not intend to exempt court officers, such as judges from the operation of § 9–1–1530, and that only persons who are part-time ‘employees’ are so exempt. This conclusion is consistent with other previous opinions of this office dated August 13, 1984; February 4, 1980 and February 10, 1970, and a memorandum issued by the State Court Administration Office dated June 30, 1983.

Sincerely yours,

Kenneth P. Woodington

Senior Assistant Attorney General

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